IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 236 of 1994

in

SPECIAL CIVIL APPLICATIONNo 7359 of 1992

with

CIVIL APPLICATION NO. 5801 OF 2002
with

CIVIL APPLICATION NO. 6608 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI
and
Hon'ble MR.JUSTICE SHARAD D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE BANK OF INDIA

Versus

V.S.VANKAR,OFFICER,JMG

Appearance:

SHRI RAKESH GUPTA WITH MS SANGEETA K. VISHEN
FOR M/S TRIVEDI & GUPTA for Appellants
MR KB PUJARA for Respondent

CORAM : MR.JUSTICE R.K.ABICHANDANI
and
MR.JUSTICE SHARAD D.DAVE

Date of decision: 27/12/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE R.K.ABICHANDANI)

1. The appellants have challenged the judgement and order of the learned Single Judge dated 31st March 1994, allowing the petition of the respondent by setting aside the order of his removal from service as a cashier of the appellant No.1 bank, and directing his reinstatement with full backwages.

2. The respondent was, at the relevant time, working as a cash officer with the State Bank of India, at Dugari Branch (Kheda district). During his incumbency as a cash officer, certain acts of serious misconduct were reported against him and a chargesheet dated 26th July 1992 in accordance with the Rule 50(2)(iii) of the State Bank of India (Supervising Staff) Service Rules was served on him. Article 1 of the charges related to misappropriation of funds of the borrowers of the bank by misrepresentation and it contained three distinct instances, out of which, instance No.1 was proved during the inquiry. Articles 2 and 3 of the Charge related to misuse of official position and doing acts unbecoming of an officer of the bank, tarnishing the image of the bank, and violating Rule 41(1) of the said Rules. Article 2 contained three distinct instances, of which instance No.2 was proved at the inquiry. The two instances which were proved out of articles 1 and 2 are re-produced as under, from the article of charges :-

Article 1 : "Misappropriation of funds of bank's borrowers' through misrepresentation :-

1. You are alleged to have misappropriated the borrowers' funds by misrepresentation in the following cases:

(i) An agricultural cash credit of Rs.20,000/- was sanctioned to one Shri Navalsinh Bhurabha Gohel of village Kheda. You are alleged to have obtained his signatures on the related documents on

29-7-1989 and misrepresented to him that the funds can be collected by him after about a week. You are alleged to have withdrawn the amount of Rs.20,000/from the loan account on the 31st July 1989 and thus, misappropriated the borrowers' fund. It is further alleged that you also failed to refund the amount to him immediately.

(ii) xxxxx

(iii) xxxxx

Article 2: Misuse of official position and doing acts unbecoming of an officer of the bank tarnishing the image of the bank :

You are alleged to have, in the following instances, borrowed funds from the bank's constituents when they came transact business / send funds for credit to their accounts.

Violation of Rule 41(i) of the State Bank of India (Supervising Staff) Service Rules :

(i) xxxxx

(ii) You borrowed from Shri Bhagawantsinh D. Parmar an amount of Rs.20,000/- on 13-4-1989 when he had come to the branch to credit this amount to the savings bank account of Shri Hanubhai Mansangbhai Parmar. While borrowing the amount, you had promised to credit the same to the account of Shri Hanubhai Mansangbhai Parmar after a week. You failed to do so and gave Shri Bhagwantsinh D. Parmar cheque No.075165 for Rs.20,000/- in favour of Shri Hanubhai Mansangbhai Parmar drawn by your wife only on the 2nd January 1990.

(iii) xxxxx "

3. The delinquent refuted the charges by his reply

dated 25-9-1990, a copy of which is at Annexure "D" to the petition. As regards the aforesaid two charges which were proved, he had stated as under :

"(1) Misappropriation of funds of bank's borrowers' through misrepresentation -

(i) It is not correct to say that I obtained the signatures of Shri Navalsinh Bhurabha Gohel of village Kheda on the loan documents of Rs.20,000/- on 29-7-1989. I have also not misrepresented to him that the funds can be collected by him after about a week. I disown having withdrawn an amount of Rs.20,000/- from his loan account on the 31st July and misappropriated the borrowers' fund since I have not withdrawn Rs.20,000/- from his loan account by refunding the amount to him immediately is out of relevance.

(ii) xxxxx

(iii) xxxxx

2. Misuse of official position and doing acts of an officer of the tarnishing the image of the bank.

3. Violation of Rule 41(i) of the State Bank of India Service Rules.

3(1) xxxxx

3(2) It is not correct to say that I borrowed from Shri Bhagawantsinh D. Parmar an amount of Rs.20,000/- on 13-4-1989 when he came to the branch to credit Rs.20,000/- in the account of Shri Hanubhai Mansangbhai Parmar. Since I did not borrow the amount as alleged, my paying it back in the account of Shri Hanubhai M. Parmar seems illegal. I have no knowledge of my wife having given a cheque to Hanubhai M. Parmar. In this connection, my wife will be in a better position to comment upon her transaction.

3(3) xxxxx

4. A copy of the inquiry report was served on the

delinquent, as is clear from the forwarding letter dated 20th May 1991. In the said detailed inquiry report, the inquiry officer took note of the fact that the document at PE-24 dated 18-9-1989, a copy of which is on record attached to the additional affidavit filed on behalf of the bank in the petition, disclosed that the delinquent had given a cheque to Shri N.G.Gohel (who was the bank customer in whose favour, as per the charge at article 1(i), agricultural cash credit of Rs.20,000/- was sanctioned, which according to the Bank, was taken on 31-7-1989 from the bank cashier by the delinquent), and it was stated therein that if the amount covered under the cheque was not realised, then the writing dated 18-9-1989 which was given by Shri N.G.Gohel will be treated as cancelled. It is also stated that, the said writing was prepared for creating the defence of the delinquent. It was stipulated in that document that the amount of the cheque would be realised latest by 20-9-1989. This writing was executed and signed by the delinquent. It was held by the inquiry officer that this writing was a genuine document and it was established from it that there was substance in the complaint lodged by Shri N.G.Gohel that the loan amount of Rs.20,000/- was not received by him though it was disbursed by the branch on 31-7-1989, and that it further showed that the delinquent was responsible for the non-receipt of the said loan amount by Shri Gohel. The inquiry officer also relied upon the categorical statement of the cashier Shri Pandya, PW-1 that the said an amount of Rs.20,000/- was handed over by him to the delinquent on 31-7-1989. The inquiry officer further held that this finding was reinforced by another document, PE-20, which was also executed by the delinquent being letter dated 10-11-1989 addressed to the bank's vigilance officer, in which it was stated by the delinquent that he had taken the amount by way of loan because of his personal relations with Navalsinh Gohel. The statement was given in context of the complaint made by Shri Gohel. The delinquent stated that, in future, he would not commit any such foily. The inquiry officer observed that nobody would write and sign such a letter simply because the vigilance officer of the bank asked him to give his statement. It was also noticed that, in letter dated 28-12-1990 which was given by the delinquent to the inquiry officer on being asked as to whether he wanted to say anything as against the charges and the allegations recorded, at the end of the inquiry, the delinquent had stated that, in November 1989, he was under great mental tension and had written letter, PE-20, to get out of the awkward situation in which he was placed. The execution of the document PE-20 was thus admitted by the delinquent even at the end of

the enquiry.

4.1 It is clear from the record that, during the inquiry, the delinquent was given adequate opportunity of being heard and he was represented by departmental representative through out the inquiry.

4.2 As regards the other charge which was proved which related to the amount of Rs.20,000/- given to the delinquent by the bank customer for being deposited in his account i.e. in the account of Shri Hanubhai Mansangbhai Parmar, which cash amount, according to the Bank, was retained by the delinquent and not deposited in the account, but much latter, it came to be credited to the account of the said customer by a cheque drawn by the wife of the delinquent on 2nd January 1990. The inquiry officer relied upon the document, PE-20, which was exhibited also executed by the delinquent, in which the delinquent had written that he had received Rs.20,000/on 13-4-1989 from Shri Hanubhai Mansangbhai Parmar in cash. The document, PE-12, which was also admitted during the proceedings was a cheque drawn by the wife of the delinquent for Rs.20,000/- in the name of Shri Hanubhai Mansangbhai Parmar. The inquiry officer, taking note of the fact that, in his statement dated 28-12-1990, the delinquent had mentioned that he was the only earning member of his family, held that it was not possible to believe the delinquent when he says that he was unaware of his wife signing and handing over the said cheque for Rs.20,000/- to H.M.Parmar. The inquiry officer, thus, relied upon the documents which were executed by the delinquent himself and studiously kept away the documents, which were not duly proved, by giving reasons as to why he was not relying on those documents.

5. The Appointing Authority, on the basis of the record of the inquiry proceedings, agreed with the observations and conclusions reached by the Disciplinary Authority in its note of recommendation and held that the said charges were duly proved. The note of recommendation of the Disciplinary Authority is also a detailed document which shows thorough application of mind to all the relevant aspects of the matter. On the first charge which was proved in connection with the agricultural cash credit of Rs.20,000/- sanctioned to Shri N.B.Gohel and taken away by the delinquent, the disciplinary authority held that, based on the document PE-24, the fact of misappropriation of the funds by the chargesheeted officer was established and this was further reinforced by the contents of PE-20, which was a letter addressed by the delinquent to the vigilance

officers. It was held that the reasons given by the delinquent in his letter dated 28-11-1990 in writing exh.PE-20 were not credible. It was held that the deposition of the cashier Shri Pandya cannot be read in isolation and that the allegations were established on the basis of deposition of Shri Pandya coupled with the documents exhs.20 and 24. The disciplinary authority rejected the contentions raised on behalf of the delinquent in the following terms :

"I do not find any substance in the submissions made by Shri Vankar. I observe that exh.PE-20 is a letter addressed by the chargesheeted official to the bank's vigilance officer. The chargesheeted official's submission in respect of the circumstances under which the letter has been written may contain some validity in it and therefore, I am inclined to accept his contention that the same may not be accepted as valid evidence. As regards exh. PE-24, this is a letter given by the chargesheeted official to Shri Gohel, the complainant and it cannot now be contended by the chargesheeted official that the contents thereof are not correct or even question the validity of the document itself. I find that the inquiry officer has dealt with this aspect in detail and I am in agreement with his views.

I observe from the inquiry records that the defence has at no point of time raised a contention that the money was borrowed by the chargesheeted official from the complainant. The defence has all along taken this stand that the money was in fact received by Shri Gohel, the complainant. It is only now in the submissions that the chargesheeted official claims that the sum of Rs.20,000/was borrowed from Shri Gohel. This submission cannot therefore be accepted. The deposition of the cashier witness PW-1 is sufficiently lucid and has been properly interpreted / evaluated by the inquiry officer in his report. Further, I find from the deposition that Shri Pandya is categorical in stating that the amount of RS.20,000/- was handed over to the chargesheeted official and that the complainant had not come to the branch on that day. I therefore do not find any reason to change my conclusions in respect of the findings of the inquiry officer.

5.1 As regards the second charge proved, the

disciplinary authority, negativing the contentions of the delinquent, held as under :

"I do not find any substance in the submissions by Shri Vankar. I observe that the enquiry officer has observed in his report that the exhibit PE-13 was admitted alongwith all other documents with the general condition that the documents would be proved by examining the makers thereof, in due course. The enquiry officer has also stated that in the case of exhibit PE-13, as this could not be done, he had not based his arguments while arriving at his conclusions on this exhibit but has relied on exhibits PE-11 and PE-12. The enquiry officer has observed that although there is a mistake as to the identity of the complainant, in the chargesheet, this does not materially alter the basic character of the allegation. I observe that the chargesheeted official's submission that the enquiry officer has taken on the role of the presenting officer is not acceptable as as the records of the proceedings do not support such a submission. As regards PE-11, the enquiry officer has stated that at the time of admission of the document, the general condition referred to earlier in respect of admission of other documents also applied to PE-11. He has stated that the chargesheeted official has not disputed the genuineness of the document and since it is a receipt bearing his signature merely because it has been witnessed by other persons, it is not necessary to examine such witnesses to establish the authenticity of this document. I am in full agreement with the enquiry officer's stand. The obtention of witnesses to the making of the document are for satisfying the person in whose name the receipt was made by the chargesheeted official and they have no bearing as far as the authenticity of the document is concerned as the defence itself had accepted the document of which the chargesheeted official himself was the maker.

The submission that the chargesheeted official is not required to disprove the allegation is correct. However, at no point in the proceedings / report of the enquiry officer had such a stand been taken by the enquiry officer. The chargesheeted officer has sought to quote the enquiry officer out of context in making out such a submission.

The enquiry records as correctly brought out by the enquiry officer show that the alleged transaction did take place. The defence version on the basis of exhibits D2 / 1, 3, 4 and 9 only show that another transaction of Rs.20,000/- may also have taken place."

6. The matter was carried in appeal by the delinquent and on the first charge, the appellate authority, after considering the contentions raised by the delinquent in detail and the record of the proceedings, held that the maker of the documents, PE-20 and PE-24 was the appellant himself and the genuineness of the document or contents thereof were not disputed or questioned by him during the inquiry proceedings. It was held that the appellant was given due opportunity to make a statement during his defence before concluding the proceedings and he had availed of that opportunity and did not question or dispute the contents of the proved documents which he had written. The appellate authority in terms negatived the contention of the delinquent that the opportunity as envisaged by Rule 50(2)(xvii) of the Service Rules was not given to the delinquent. It was held that the evidence adduced during the inquiry clearly established the fact that the delinquent had received a sum of Rs.20,000/- which he did not hand over to the borrower. It was held that the delinquent had participated fully during the inquiry proceedings himself and did not dispute the genuineness of the documents PE-20 and PE-22. It was noted that, in PE-24, it was clearly stated by the delinquent that a cheque was issued to the complainant. The appellate authority, appreciating the statement of the cashier - Shri Pandya and the documents PE-20 and 24, held that the charge of Article 1(i) was rightly held to be proved. On the charge under article 2(ii), which was proved, the appellate authority observed that the document at EX-11 was a plain and simple receipts signed by the delinquent and was admitted by the delinquent. Relying on PE-11, which was acknowledgment for the receipt of Rs.20,000/by the delinquent from H.M.Parmar, cheque PE-12 drawn by the wife of the delinquent for Rs.20,000/- in favour of H.M.Parmar and the letter of the delinquent dated 28-12-1990, the appellate authority held in paragraph 4(vii), (viii) & (ix) that the funds were handed over to the delinquent in his capacity as an officer of the Bank by a customer for putting through his banking transactions and not in his private capacity, and that the delinquent's referring to borrowings from friends and relatives was irrelevant. The appellate authority held

that the findings of the inquiry authority and the conclusions of the disciplinary authority were based on evidence adduced during the inquiry proceedings and were logical.

7. In the background of the aforesaid findings of the inquiry officer, the disciplinary authority and the appellate authority, it was strongly contended on behalf of the appellant that the learned Single Judge could not have taken a different view of the matter, because, the findings reached by the concerned authorities were reached on the basis of appreciation of the evidence on record. The learned counsel argued that the learned Single Judge was under an impression that the documents which were adduced by the delinquent were not considered though they were specifically considered as is evident from the inquiry report and the decisions of the concerned authorities. It was contended that the documents at PEs 20 and 24 read in light of the deposition of the cashier Shri Pandya clearly established that the cash amount of Rs.20,000/- which was required to be disbursed to the bank customer Shri N.B.Gohel on 31st July 1989, was, in fact, received by the delinquent. The learned counsel for the appellants relied upon the following decisions in support of the above contentions:

[i] The decision of the Supreme Court in Apparel Export Promotion Council Vs. A.K.Chopra, reported in (1999) 1 SCC 759 was cited for the proposition that judicial review was not concerned with the correctness of the decision but is confined to the examination of the decision making process.

[ii] The decision of the Supreme Court in State of Haryana Vs. Rattan Singh, reported in AIR 1977 SC 1512 was cited for the proposition that in a domestic inquiry strict and sophisticated rules of evidence under the Evidence Act may not apply. All materials which are logically probative for a prudent mind are permissible.

[iii] State Bank of India Vs. Samarendra Kishore Endow, reported in JT 1994 (1) SC 217 was cited for the proposition that under Article 226 of the Constitution has no power to substitute its own discretion for that of the disciplinary authority in the matter of imposition of punishment.

7.1 The documents at PE Nos. 20 and 24 clearly indicate that the amount was taken by the delinquent and

not handed over to the customer on the day it was given to him by the bank cashier Shri Pandya. The amount was intended towards agricultural cash credit facility to Shri N.B.Gohel and having obtained the signatures on the related documents on 29-7-1989, the delinquent accepted the amount of Rs.20,000/-, which was meant to be released against those documents in favour of Shri N.B.Gohel and did not hand over that amount to Shri Gohel. It is on the basis of these material documents and the evidence that the inquiry officer, the disciplinary authority and the appellate authority reached the concurrent findings about the guilt of the delinquent as regards the Charge under Article 1 (i). Therefore, this is not a case where the findings were reached by the disciplinary and appellate authorities without there being any evidence on record. The observation of the learned Single Judge that this is a case of "no evidence" was, therefore, not at all warranted.

8. Even as regards the second allegation, the finding of all these authorities are based on cogent evidence on record, particularly in nature of the document written by the delinquent himself at PE-11, in which it was specifically stated by him that he had accepted a sum of Rs.20,000/- from Shri Hanubhai M. Parmar. As per the charge, the amount was given to the delinquent for being deposited in the account of Shri Hanubhai, but he did not deposit that amount in the account of that customer and instead, retained it with himself. Later on, in January 1990, that amount of Rs.20,000/- came to be credited in the account of Hanubhai Parmar by a cheque drawn by the wife of the delinquent, a copy of which is at PE-12. When the delinquent was the sole earning member in the family, his defence that he did not know as to under what circumstances his wife had given that cheque of Rs.20,000/= which came to be credited in the account of Shri Hanubhai Parmar, was rightly not accepted by the authorities. In short, the decisions of the disciplinary and appellate authorities are based on appreciation of the evidence on record and there was absolutely no warrant for interference with their orders by the learned Single Judge.

9. The observation of the learned Single Judge that the documents produced by the delinquent were brushed aside, is not at all warranted by the record of the inquiry proceedings and the impugned decisions. On the basis of the defence documents, it was tried to be argued that an amount of Rs.20,000/- accepted by the delinquent was credited to the account of one Shri G.H.Parmar. The

documents D2/1, D2/3 and D2/4 were all in connection with the account of Shri G.H.Parmar who is said to be the son of Shri H.M.Parmar as per the defence version. These documents are duly considered in his comments by the inquiry officer in paragraph 31(g) in which he observed that the representative of the delinquent had attempted to demolish the presenting officer's case through exh. D2/1, 3, 4 and 9, but these documents did not disprove or contradict the case arising out of the documents produced by the presenting officer, and that they merely showed that an amount of Rs.20,000/- was credited by cash to the account of Shri G.H.Parmar on 13-4-1989. It was held that this fact in itself did not serve to disprove the other transaction. The learned Single Judge, from this expression "other transaction" felt that there may be some transaction which was not referred to on the record. The "other transaction" was obviously the transaction referred to in the charge Article 2(ii) against the delinquent. Under the charge, it was in Hanubhai M. Parmar's account that the amount of Rs.20,000/- was to be credited which the delinquent did not, and which came to be credited much latter by a cheque issued by his wife. The amount which was required to be credited in the account of Shri H.M.Parmar could not have been credited in some other account even if it were that of his son. If the amount was in fact credited in some account other than that of Shri H.M. Parmar at his instance, there would have been no need to credit the amount of Rs.20,000/= again to the account of Shri H.M.Parmar by a cheque issued by the wife of the delinquent. The defence of the delinquent that he was not aware of any such cheque having been issued by his wife appears to be palpably false. Taking up a false defence itself adds to the strength of the version of the Bank. The concurrent findings of the inquiry officer, the disciplinary authority as well as the appellate authority are, thus, based entirely on the appreciation of the relevant material on record, and by no means can they be described as perverse. There was, therefore, absolutely no warrant for any interference with the impugned decisions by which the delinquent was removed from service.

10. The learned counsel for the delinquent placed reliance on the decision of the Supreme Court in Ministry of Finance v. S.B.Ramesh, reported in AIR 1998 SC 853, particularly on paragraph 12 of the judgement, in which it was held in context of Rule 14(18) of the CCS (CCA) Rules, which is said to be similar to the present Rule 50(2)(xvii) of the said Service Rules, that, it was a mandatory provision, and that the authority was bound to follow it. In the present case, it is clear from the

inquiry report that, at the end, the delinquent was asked generally as to what he had to say against the charges and allegations and the delinquent, in terms, stated that, he had already submitted letters dated 25-9-1990 addressed to the G.M.O. and the disciplinary authority and the inquiry authority making his submissions and in addition, he was submitting one more letter on that day i.e. 28th December 1990. That letter is also on record and has been considered by the concerned authorities. This is not a case where the inquiry had proceeded exparte against the delinquent, as was the case before the Supreme Court. In the present case, the delinquent had an ample opportunity to put forth which he availed of and was all through out present and represented during through the departmental representative. Therefore, this decision cannot assist the delinquent.

10.1 It was also contended that the documents were not duly proved. In support of this submission, reliance was placed on the observations made by the Supreme Court in S.B.Ramesh's case (supra), in which the Supreme Court observed that the documents which were not proved in accordance with law, should not have been received in evidence. The learned counsel also referred to the decision of the Supreme Court in Sher Bahadur Vs. Union of India, reported in (2002) 7 SCC 142 in which it was held that evidence which is neither relevant in a broad sense nor established any nexus between the alleged misconduct and the changed officer, is not evidence in law. In the present case, the material documents, namely, PE-11, PE-20, PE-24 were relevant documents written and signed by the delinquent himself and therefore, there was no question of these documents being proved by any other evidence. Therefore, the above decisions of the Supreme Court cannot assist the delinquent.

11. It was stated by the learned counsel for the respondent that the delinquent had a large family to support, and that initially when the matter was admitted, there was a talk of compromise between the two sides and the delinquent was even prepared to accept a lower post of clerk, if punishment of removal was reduced to reversion. We therefore had asked the learned counsel for the bank to consider the same, and today, we were told that the bank was not prepared to agree to any such settlement since it would send wrong signals. The learned counsel for the delinquent, therefore, has contended that the punishment of removal from service is harsh in the facts and circumstances of the case. In our opinion, removal is the minimum punishment which could be

granted in the background of the facts of the case. The delinquent was serving as a cash officer and only two out of six instances have been proved. The efforts which may have gone into at the behest of the delinquent to ensure that the complainant backs out from his complaint are eloquent from the writings PE 20 and PE 24. It is only on the basis of his own admitted writings PE 20, PE 24 and PE 11 that these two charges have been established. We do not find any valid reason to show leniency in this matter, apart from the fact that, in exercise of its extraordinary powers, the High Court would ordinary not reduce the punishment imposed by the departmental authority unless it shocks the conscience of the Court. In the present case, if any lesser punishment was granted, that would have shocked the conscience of the Court. We may note that for reasons best known to the Bank the delinquent was not even prosecuted.

12. In view of what we have said hereinabove, the appeal is allowed and the impugned order of the learned Single Judge in Special Civil Application No.7359 of 1992 is hereby set aside and the orders passed by the concerned authorities removing the delinquent from service are restored. There shall be no order as to costs. The Civil Applications stand disposed of in view of the order made in the appeal.

[R.K.ABICHANDANI, J.]

[SHARAD D. DAVE, J.]

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